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convicted of bigamy. *Held*, that the West Virginia divorce decree would not be recognized, the conviction for bigamy being sustained. *Corvin v. Commonwealth* (1921, Va.) 108 S. E. 651.

Where one spouse has obtained a domicile in a state other than that of the rightful matrimonial domicile, and has obtained a divorce without personal service or appearance of the other spouse, the court of the matrimonial domicile need not recognize the divorce under the full faith and credit clause of the federal constitution. *Haddock v. Haddock* (1906) 201 U. S. 562, 26 Sup. Ct. 525; but see Goodrich, *Matrimonial Domicil* (1917) 27 YALE LAW JOURNAL, 49. The courts, however, are disposed to recognize the decree on the grounds of comity, but there is authority to the contrary. *Joyner v. Joyner* (1908) 131 Ga. 217, 62 S. E. 182; *Duncan v. Duncan* (1920) 265 Pa. 464, 109 Atl. 220. If the spouse who obtained the divorce had induced the court to take jurisdiction by fraudulent representations, the decree will not be recognized in another state because of the lack of jurisdiction of the court granting the divorce. *Wagoner v. Wagoner* (1921, Mo.) 229 S. W. 1064; but see *Hicks v. Hicks* (1912) 69 Wash. 627, 125 Pac. 945. In the instant case, however, the fraud was not such as affect the jurisdiction of the court, and it would be an anomaly to permit a decree to be attacked collaterally for perjury in the trial itself. From statements in some cases it seems as though this exception may be created in divorce cases, although the point has never been squarely decided. See *Succession of Benton* (1901) 106 La. 494, 31 So. 123; 59 L. R. A. 135, 186, note; but see *Deyette v. Deyette* (1918) 92 Vt. 305, 104 Atl. 232 (suit brought by third party). Since the courts are therefore not required to recognize a decree of divorce based on service by publication, they may specify under what conditions they will recognize it. It seems, however, that only strong reasons of public policy should induce a court to refuse to give effect to a decree, as in the instant case, on the grounds of perjury at the trial.

CONTRACTS—IMPOSSIBILITY OF PERFORMANCE BY THE PLAINTIFF OF A CONDITION PRECEDENT TO THE DUTY OF THE DEFENDANT.—The plaintiff was employed by the township trustee to teach in the county school for a six-month term. The health board, acting under statutory authority, ordered the trustee to close the school in view of an influenza epidemic. *Burns Ann. Sts.* 1914, sec. 7608. The plaintiff sued the trustee for payment for the period during which she had not been able to teach. *Held*, that the trustee was under no duty to pay. *Gregg School v. Hinshaw* (1921, Ind.) 132 N. E. 586.

The recent tendency in similar cases has been to evade the real problem by finding either that the defendant has waived the condition of performance by the plaintiff, or that the defendant has impliedly ordered the teacher to hold himself in readiness to perform during the period of suspension, and thus not only waived the original condition but received a substituted performance of equal value. *Board of Education v. Couch* (1917) 63 Okla. 65, 162 Pac. 485; *Montgomery v. Board of Education* (1921, Ohio) 131 N. E. 497. Such a solution, however, is unsatisfactory, since, in the majority of cases, there is no foreknowledge of the duration of the closing, and such a request may always be implied from the mere form of the notice. See *Montgomery v. Board*, *supra*. And even those cases which imply the request from the temporary nature of the closing, seem to hold, somewhat inconsistently, that if at any time afterward, the closing becomes permanent, such a request will not be inferred. *Randolph v. Sanders* (1899) 22 Tex. Civ. App. 331, 54 S. W. 621; *Board v. Couch*, *supra*. Other courts hold that the performance of the teaching service, the condition precedent to the duty of the defendant to pay, has been made impossible, apparently by the defendant's act in closing the school, and that such prevention by the defendant nullifies the condition. *Dewey v. School District* (1880) 43 Mich. 480; *School District v. Gardner*

(1920) 142 Ark. 557, 219 S. W. 11; *Crane v. School District* (1920) 95Or. 644, 188 Pac. 712. It seems strange, however, that courts have not taken the necessary step further and recognized that the same things which excuse the plaintiff from the performance of *his* duty, should excuse the defendant when he makes it impossible for the plaintiff to perform a condition precedent to the *defendant's* duty. For example, if the influenza epidemic had reached such proportions that the teacher's life would be endangered if he continued to teach, there is little doubt that he would be excused from his promised performance, and that the defendant would be excused from payment, since the latter had not received the expected consideration. *Lakeman v. Pollard* (1857) 43 Me. 463. Thus if the plaintiff's promised performance was the attendance of babies at a baby show, if the prevalence of an epidemic made such attendance dangerous to the lives of the babies, the plaintiff would be excused from performance and the defendant from payment. *Hanford v. Conn. Fair* (1918) 92 Conn. 621, 103 Atl. 838. If the plaintiff has the privilege to refuse performance if his or a third person's life is endangered, and thereby can destroy the *defendant's* rights under the contract as well as his own, there seems to be no reason why the defendant under the same circumstances should not have the privilege to keep the plaintiff from performing the condition precedent to the defendant's duty, and thereby destroy the *plaintiff's* rights under the contract, as well as his own. Tested by this reasoning, even without such statutory sanction as in the principal case, the defendant should be excused. *Sandry v. Brooklyn School District* (1921, N. D.) 182 N. W. 689; 3 Williston, *Contracts* (1920) sec. 1958.

COPYRIGHT—COMMON-LAW COPYRIGHT—PRODUCER'S RIGHTS IN CREATION.—The defendant, composer of the "Wicked Blues," sold all his rights therein to the plaintiff. Subsequently the defendant with others copyrighted the song as the "Crazy Blues" and published it. The plaintiff sought an injunction. *Held*, that the defendant by his sale to the plaintiff parted with his common-law rights in the production and that an injunction should issue. *Kortlander v. Bradford* (1921, Sup. Ct.) 116 Misc. 664, 190 N. Y. Supp. 311.

Until publication a producer has at common law full property rights in his intellectual creations. *Parton v. Prang* (1872, C. C. D. Mass.) 3 Cliff. 537; *Bobbs-Merrill Co. v. Straus* (1906, C. C. A. 2d) 147 Fed. 15; Morgan, *Law of Literature* (1875) 392. What constitutes a publication is often difficult to determine. "A publication consists in such a disclosure, exhibition, or distribution as implies an abandonment of the right of copyright or its dedication to the public. . . . The nature of the subject-matter . . . and the nature of the rights secured, are chiefly determinative of the question of publication." *Werckmeister v. American Lithographic Co.* (1904, C. C. A. 2d) 134 Fed. 321, 326. It was originally held that even after publication or dedication to the public the exclusive right to the control of reproduction remained with the producer, his representatives, or assigns. *Millar v. Taylor* (1769, K. B.) 4 Burr. 2303. But it is now everywhere well-settled that a producer's common-law rights in an unpublished work cease upon publication. *Donaldsons v. Beckett* (1774, H. L.) 4 Burr. 2408; *Wheaton v. Peters* (1834, U. S.) 8 Pet. 591. See Drone, *Copyright* (1879) 13. The right to the control of reproduction after publication is now purely statutory. *Caliga v. Inter Ocean Newspaper Co.* (1909) 215 U. S. 182, 30 Sup. Ct. 38. Having full property rights prior to publication, an author can deal with his production as with any other personalty. *Maurel v. Smith* (1921, C. C. A. 2d) 271 Fed. 211. He may dispose of the physical object solely and retain the right to make copies or to obtain a copyright. *Parton v. Prang*, *supra*; *Stephens v. Cady* (1852, U. S.) 14 How. 528. He may otherwise make a restricted disposal of it as by selling the right to reproduce in certain countries only. *Daly v. Walrath*